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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. OSIEL MARQUEZ, Defendant and Appellant.	B212566 (Los Angeles County Super. Ct. No. LA045200)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Kennedy-Powell, Judge. Affirmed in part and reversed in part with directions.

Susan K. Keiser, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

Osiel Marquez appeals from the judgment entered after his conviction by a jury of 35 crimes arising from six separate episodes in which he kidnapped a couple, robbed them and then sexually assaulted the women. Sentenced to determinate terms totaling 620 years, plus indeterminate terms of 1075 years to life, Marquez contends there was insufficient evidence to convict him on one count of rape (out of five total counts of rape) and the trial court erred in failing to stay, pursuant to Penal Code section 654,[1] the sentence imposed on one of two counts of carjacking. In addition, Marquez contends, and the People concede, the evidence was insufficient to convict him of two, rather than one, counts of forcible oral copulation with one of his victims. We reverse Marquez's conviction on one count of forcible oral copulation, impose additional mandatory fees and penalties omitted by the trial court and order the abstract of judgment corrected to reflect the oral pronouncement of the court, as well as the modifications set forth below. In all other respects, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Evidence at Trial*

a. *July 12, 2003*

Early on the morning of July 12, 2003 Marquez entered the North Hollywood motel room of Sofia R. and her boyfriend. Holding a gun under a towel, Marquez tied the boyfriend's hands behind his back and took Sofia's wallet from her purse. Marquez told the couple he was being paid $12,000 to kill the boyfriend. After putting the boyfriend in the bathroom and threatening to kill him if he moved, Marquez placed his gun against Sofia's head and his erect penis in her mouth. He began to kiss and fondle her body and then dragged her to the floor where he put his finger in her vagina. After putting on a condom, he penetrated Sofia's vagina with his penis. He told her, if she wanted to live, she had "better do what he said." He then placed his penis in her mouth a second time, and once again in her vagina.

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[1] Statutory references are to the Penal Code unless otherwise indicated.

After the assault Marquez dragged Sofia to the bathroom and, still pointing the gun at her, forced her to take a shower. He flushed the used condom down the toilet. Marquez told Sofia and her boyfriend to count to 100 and threatened to come find them if they called the police. Marquez then left the motel room. Money was missing from both Sophia's purse and her boyfriend's wallet. A sexual assault examination revealed bruises on Sofia's leg but no visible injuries to the vaginal area.

b. *November 27, 2003*

In the early morning of November 27, 2003 Lynette S. and her boyfriend were sleeping in another North Hollywood motel. After knocking on the door, Marquez held a gun to the boyfriend's face and forced his way into the room. Marquez ordered Lynette out of the bed and directed her to turn on the television. When Lynette tried to comply, Marquez grabbed her breasts and buttocks. He then forced the couple into the bathroom while he rummaged through their belongings. At one point, Marquez told the couple he had been sent to kill the boyfriend.

Marquez then pulled Lynette from the bathroom and put his gun to the boyfriend's head. The boyfriend grabbed the gun and wrested it away from Marquez. During the struggle, the gun fired; and Lynette ran from the room to call the police. Marquez fled. The boyfriend discovered his cellular telephone and $600 in cash were missing; Lynette discovered she was missing her credit cards, some jewelry and a few dollars.

c. *December 18, 2003*

On the morning of December 18, 2003 Luisa C. and her husband were sleeping in their North Hollywood apartment. Their four-month-old son was sleeping in a crib in their bedroom. Luisa awoke at 3:25 a.m. to use the bathroom and saw a man's shadow in the living room. She screamed, ran back to the bedroom and tried to close the door behind her. Marquez followed her into the room and pointed a gun at Luisa. He ordered Luisa's husband to lie on the floor and tied him up. Marquez told the husband he had been sent by "Oso" to kill the husband. He put a gun to the husband's head and demanded his wallet. Marquez also took some jewelry from Luisa although he allowed her to keep her wedding ring.

Marquez then took Luisa into the living room, where he began to kiss her and touch her body. He told her to sit down and touched her vagina with his fingers and then inserted his penis. When Luisa complained about the pain, he placed his penis in her mouth. He then said, "Not like that," and sodomized her. Luisa again complained about the pain, and Marquez again had vaginal intercourse with her. He told her to cooperate or her husband would get hurt. He touched her vagina again and then inserted his penis into her vagina once more. After the assault Marquez ordered Luisa back into the bedroom. He told Luisa and her husband to count to 100. He left through a kitchen window.

A sexual assault examination revealed redness around Luisa's vaginal area, as well as multiple tears in her anal area. DNA analysis of a swab taken from Luisa's shoulder revealed a match with Marquez's DNA profile.

d. *February 3, 2004*

Candy T., aged 17, and her boyfriend were parked in their car on a North Hollywood corner in the early morning of February 3, 2004. Marquez knocked on the window of the car and asked for their identification. Candy's boyfriend handed his identification to Marquez, who said he had been looking for the boyfriend. He pulled out a gun and placed it against the boyfriend's neck and then demanded money. Candy gave Marquez $20 and told him she could get more from her mother. Marquez got into the back seat of the car, still holding the gun to the boyfriend's neck; and Candy began to drive.

Marquez told the couple he had been paid $10,000 to kill the boyfriend. As directed by Marquez, Candy stopped the car in an alley; and Marquez ordered the boyfriend out of the car. After Candy drove off again, Marquez asked her what she would do to save her own life and that of her boyfriend. Candy said she would do anything. At Marquez's direction, Candy parked the car. He then told her to remove her clothes. Marquez lowered his own pants and told Candy to orally copulate him, which she did. Marquez then put a condom on his penis and told Candy to get on top of him. She complied, and Marquez began to suck her nipples. In Candy's words, "after a couple of minutes—well, I think, I guess, he was done. I just got off."

Marquez then directed Candy to drive back to the alley where they had left her boyfriend but, on the way, told her to drop him off at a nearby park. When Candy returned to the alley, her boyfriend had called the police. A sexual assault examination revealed no visible injuries but analysis of a swab from Candy's breast matched Marquez's DNA profile.

e. *February 7, 2004*

On the late afternoon of February 7, 2007 Claudia G., her husband and her uncle were sleeping in their car near a North Hollywood park. Pointing a gun at Claudia's husband, Marquez got into the car and told Claudia's husband to drive. As they drove, Marquez told Claudia she should do a good job because he had a "green light" on her husband.[2] When Claudia's husband protested he had no problems with anyone, Marquez said he would let them go for $3,000, a sum they did not have.

Marquez forced the husband and uncle out of the car and drove away with Claudia. While Marquez was driving the car, he forced Claudia to orally copulate him. He also inserted his finger into her vagina and touched her anus with his fingers. Claudia used a black jacket to wipe off her mouth. Marquez stopped the car and told Claudia to get out and climb over a fence near the road. Police found Claudia there and the abandoned car behind some nearby apartments.

A sexual assault examination revealed no trauma, but DNA analysis of a swab taken from the black jacket matched Marquez's DNA profile.

f. *February 12, 2004*

In the early morning of February 12, 2004 Christi M. and her husband were sleeping in their motor home, which was parked on a North Hollywood street near the same park where Claudia G. and her husband had been attacked. Christi, who was between five and six months pregnant, woke up and got something to eat. Shortly thereafter, Marquez knocked on the door and claimed to be a police officer responding to a call of domestic violence. Christi's husband opened a window and asked for

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[2] In prison gang slang, to "green light" a person is to authorize a contract killing.

identification. Marquez stuck a gun next to the husband's head and told him to open the door or he would shoot. Christi's husband opened the door, and Marquez demanded his wallet. Marquez told the husband he had been paid $10,000 to kill him and would do so if he did not receive money. He forced Christi's husband into the bathroom and began to go through the motor home asking for guns, drugs and jewelry. Christi, who was sitting on the bed and was more angry than scared, screamed at Marquez and told him her husband would not hurt anyone. She also told him he was crazy and lying and to "get the hell out of here." Marquez continued to ransack the apartment, telling Christi not to look at him. When he commented on the size of her breasts, she again yelled at him, causing Marquez to tell her to shut up or he would kill her, all the while pointing the gun at her stomach. Marquez approached Christi and cupped her breast with his hand, again commenting on the size of her breasts. He asked her to remove her shirt, but she refused and told him she was pregnant. When he demanded proof, she raised her shirt to show him her belly. After he saw she was pregnant, Marquez left her alone but continued to ransack the motor home. He became frustrated when he was unable to find anything of value and told Christi she was lucky because she was pregnant. He let Christi's husband out of the bathroom and told him Christi had a big mouth and was lucky he had not shot her. Marquez left after warning the couple not to call the police, taking only the $56 he had found in the husband's wallet.

2. *Marquez's Conviction and Sentencing*

The jury convicted Marquez on 35 of 37 counts charged in an amended information[3] and found true all special allegations relating to firearm-use except for

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[3] In the amended information Marquez was charged with nine counts of robbery (§ 211), two counts of assault with intent to commit rape, sodomy or oral copulation (§ 220), three counts of false imprisonment (§ 236), four counts of aggravated kidnapping (§ 209, subd. (b)(1)), two counts of carjacking (§ 215, subd. (a)), six counts of forcible oral copulation (§ 288a, subd. (c)(2)), three counts of sexual penetration with a foreign object (§ 289, subd. (a)(1)), five counts of forcible rape (§ 261, subd. (a)(2)), one count of sodomy by use of force (§ 286, subd. (c)(2)) and one count of attempted forcible rape (§§ 261, subd. (a)(2), 664). In addition, the information included numerous special allegations relating to Marquez's use of a firearm (§§ 12022.5, subd. (a)(1), 12022.53,

allegations he had personally and intentionally discharged a firearm when assaulting Lynette S. (§ 12022.53, subds. (b)-(c)). In a bifurcated proceeding, the trial court found true the special allegations relating to Marquez's prior convictions.

The court sentenced Marquez to an aggregate indeterminate state prison term of 1075 years to life and determinate terms totaling 620 years. The sentences on four counts (totaling 100 years to life) were stayed pursuant to section 654. In addition, the court imposed a $10,000 restitution fine pursuant to section 1202.4, subdivision (b); a $10,000 parole revocation fine under section 1202.45, stayed pending successful completion of parole; a $700 court security fine pursuant to section 1465.8, subdivision (a)(1); a $200 sexual offender registration fine under section 290.3; a $10 fine pursuant to section 1202.5; a $175 court construction fee pursuant to Government Code section 70372, subdivision (a)(1); and a $10 citation processing fee under Government Code section 1463.07.

CONTENTIONS

Marquez contends the evidence was insufficient to convict him on count 17, the forcible rape of Candy T. He further contends the sentence imposed on count 7, the carjacking of Claudia G., should have been stayed under section 654. Finally, he contends there was insufficient evidence to convict him of two counts of forcible oral copulation with respect to Luisa C. (counts 21 and 22).

DISCUSSION

1. *Substantial Evidence Supports Marquez's Conviction for Forcible Rape of Candy T.*

To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.]

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subds. (b)-(c)), the sexual assault circumstances (§ 667.61, subds. (c)-(d)) and his prior felony convictions, including two prior serious or violent felony convictions within the meaning of the Three Strikes Law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

Marquez was found not guilty on one count of robbery and one count of sexual penetration with a foreign object.

The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

With respect to the penetration necessary for commission of rape, "[a]ny sexual penetration, however slight, is sufficient to complete the crime." (§ 263.) In *People v. Karsai* (1982) 131 Cal.App.3d 224, disapproved on another ground in *People v. Jones* (1988) 46 Cal.3d 585, 600, footnote 8, the court rejected the defendant's argument vaginal penetration is necessary to commit rape. The court explained, "The penetration which is required is sexual penetration and not vaginal penetration. Penetration of the external genital organs is sufficient to constitute sexual penetration and to complete the crime of rape even if the rapist does not thereafter succeed in penetrating into the vagina." (*Karsai*, at p. 232; see also *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1368, 1371 [sexual penetration refers to contact with any external female genitalia "inside the exterior of the labia majora"].)

In describing the sexual assault Candy T. stated that, after forcing her to orally copulate him, Marquez put a condom on his penis and told her to get on top of him. Marquez began to suck her nipples and, "after a couple of minutes—well, I think, I guess, he was done. I just got off." Marquez contends her failure to testify she was penetrated

by his penis—or the equivalent thereof—falls short of the evidence necessary to support the charge of rape.

The fact of penetration, however, may be established by circumstantial evidence as well as direct evidence. (See *People v. Strickland* (1955) 134 Cal.App.2d 815, 818.) Further "'[t]he consummation of such an act may be shown by the circumstances and surroundings . . . . [Citation.] The right to draw proper inferences from the evidence is a function of the jury; and as long as its conclusions do not do violence to reason, an appellate court is not permitted to substitute its findings of the ultimate fact for that reached by the jury [citation], and inasmuch as we cannot say that the conclusion reached by the jury does violence to reason we likewise cannot say that such conclusion was erroneous.'" (*Ibid.*; see also *People v. Holt* (1997) 15 Cal.4th 619, 669 [affirming rape conviction based on circumstantial evidence; "[t]hat the evidence might lead to a different verdict does not warrant a conclusion that the evidence supporting the verdict is insubstantial"].)

The jury in this case heard extensive evidence of Marquez's conduct during repeated sexual assaults and, in several of those assaults, the victims testified his penis was erect and penetrated their vaginas. In Candy T.'s case, the fact Marquez's penis was erect at the time he told her to get on top of him can be inferred from the fact he put a condom on his penis immediately before she straddled him. Moreover, she was on top of him for "a couple of minutes . . . until he was done." Certainly, the jury was justified in inferring penetration occurred from Candy T.'s description and Marquez's own acts during other sexual assaults.[4] There was ample evidence to support the conviction of rape in this instance.

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[4] The lack of physical evidence of penetration in Candy T.'s subsequent sexual assault examination does not vitiate this result. The nurse practitioner who performed the examination concluded her findings were consistent with Candy T.'s account of the assault.

2. *The Trial Court Did Not Err in Imposing Consecutive Sentences for the Kidnapping and Carjacking of Claudia G.'s Husband*

Section 654[5] prohibits punishment for two offenses arising from the same act or from a series of acts constituting an indivisible course of conduct. (*People v. Lewis* (2008) 43 Cal.4th 415, 419; *People v. Latimer* (1993) 5 Cal.4th 1203, 1216.) "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19; see *Latimer*, at p. 1208.) On the other hand, if the defendant entertained multiple criminal objectives that were independent and not incidental to each other, he or she "may be punished for each statutory violation committed in pursuit of each objective" even though the violations were otherwise part of an indivisible course of conduct. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) "'The principal inquiry in each case is whether the defendant's criminal intent and objective were single or multiple.' [Citation.] 'A defendant's criminal objective is "determined from all the circumstances."'" (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469; accord, *People v. Sok* (2010) 181 Cal.App.4th 88, 99.)

Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466.) Its findings will not be reversed on appeal if there is any substantial evidence to support them. (*Hutchins*, at p. 1312; *Herrera*, at p. 1466; *People v. Nichols* (1994) 29 Cal.App.4th 1651, 1657.) "We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could

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[5] Section 654, subdivision (a), provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

reasonably deduce from the evidence." (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; see *People v. Cleveland* (2001) 87 Cal.App.4th 263, 271 [trial court's finding of "'separate intents'" reviewed for sufficient evidence in light most favorable to the judgment].)

The sentence Marquez claims should be stayed resulted from his conviction on count 7 for carjacking,[6] one of six counts arising from the February 7, 2004 attack on Claudia G., her husband and her uncle. Claudia G.'s husband was identified as the victim on the carjacking count, as well as one of the counts for kidnapping to commit robbery. Marquez contends the carjacking and kidnapping resulted from the same indivisible course of conduct and he should not be punished twice for conduct arising from a single objective.

In imposing consecutive sentences on these counts, the trial court explained, "With regard to the 209's, the kidnappings, any kidnapping for the purpose of robbery involving a female victim, and kidnapping for robbery and/or sex crimes, the court can sentence consecutively—if there's more than one purpose for the kidnapping, the court can consider those separate purposes in imposing consecutive sentencing, and that's what the court has elected to do . . . ."

The trial court, therefore, viewed Marquez's decision to kidnap all three victims as resulting from multiple objectives of robbery and sexual assault. The same is true of the carjacking; after getting into the car, Marquez forced the husband to drive away and demanded money to prevent him from killing all three of his victims. When Marquez realized they had no money, he forced the husband to stop the car and ordered the two men out. At that point, the kidnapping of the husband for purposes of robbery was complete. The carjacking, however, continued, as Marquez drove away with Claudia and

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[6] "'Carjacking' is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, . . . against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear." (§ 215.)

sexually assaulted her. Under these circumstances, substantial evidence supported the trial court's conclusion the carjacking was motivated by two separate objectives, thus justifying consecutive sentences. There was no error.

3. *Marquez Was Wrongly Convicted of Two Counts of Forcible Oral Copulation When the Evidence Supported Only One Count*

The People concede Marquez's conviction on count 22 of forcible oral copulation with respect to Luisa C. must be reversed. The evidence at trial established he touched her vagina with his fingers, inserted his penis into her vagina and forced her to orally copulate him. Marquez then sodomized her and had vaginal intercourse with her two more times. He did not force her to orally copulate him a second time.

4. *The Abstract of Judgment Must Be Amended To Reflect the Trial Court's Oral Pronouncement of Judgment*

"An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize." (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We have the authority to correct any clerical error in the abstract of judgment so the records will conform to the oral judgment pronounced by the sentencing court. (*People v. Boyde* (1988) 46 Cal.3d 212, 256; *People v. Baines* (1981) 30 Cal.3d 143, 150; *People v. Brown* (2000) 83 Cal.App.4th 1037, 1039, 1046-1047.)

The parties agree the abstract of judgment is inconsistent with the trial court's oral pronouncement of judgment in five respects.[7]

First, the minute order and abstract of judgment indicate the sentence imposed on count 10 (§ 289, subd. (a)(1) [forcible sexual penetration by a foreign object]) was stayed. The court, however, imposed a sentence of 25 years to life on that count pursuant to section 667.61, subdivisions (a) and (d). That count was also subject to an additional

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[7] In one instance the court improperly imposed a $10 "theft fine" (§ 1202.5) for each robbery and carjacking count. (See *People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [regardless of number of qualifying convictions, a crime prevention fine may be imposed only once in any case].) The abstract of judgment, however, correctly imposes this fine only once. Accordingly, there is no need to order the abstract corrected.

sentence pursuant to section 667.61, subdivisions (a), (b) and (e), and enhancements under sections 667, subdivision (a)(1), and 12022.53, subdivision (b), totaling an additional 20 years. Only the additional punishment under section 667.61 was stayed.

Second, the minute order and abstract of judgment indicate the court imposed $200 restitution (§1202.4, subd. (b)) and parole revocation (§1202.45) fines, with the latter fine stayed pending successful completion of parole. The amount actually imposed for those fines was $10,000.

Third and fourth, the minute order and abstract of judgment omit the court's order directing Marquez to register as a sex offender and its imposition of a $200 sex offender registration fine.

Finally, the abstract of judgment reflects a $10 citation processing fee that was never imposed by the court and is inapplicable to Marquez. (See § 1463.07 [citation processing fee applicable only when a defendant is cited and released].)

5. *The Court Erred in Failing To Impose Certain Mandatory Fees and Penalties*

The People contend the trial court erred in failing to impose mandatory penalty assessments, surcharges and court construction fees in connection with the fines imposed under sections 290.3 and 1202.5. Marquez contends the court properly exercised its discretion in omitting those additional fees.

Once a court has determined a defendant is required to pay the fine pursuant to section 290.3, it is jurisdictional error not to impose the penalties established by section 1464, subdivision (a), and Government Code section 76000, subdivision (a). (*People v. Stewart* (2004) 117 Cal.App.4th 907, 910.)[8] Having concluded Marquez was able to pay the sex offender registration fine (and ordering payment of those fines from his prison wages), the trial court was required to impose additional mandatory penalties pursuant to

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[8] "If a trial court fails, without explanation, to impose the section 290.3, subdivision (a) sex offender fine, that is not a jurisdictional error. As noted previously, section 290.3, subdivision (a) states the fine must be imposed unless the trial judge finds the accused 'does not have the ability to pay the fine.'" (*People v. Stewart, supra*, 117 Cal.App.4th at p. 911; accord, *People v. Walz* (2008) 160 Cal.App.4th 1364, 1371.)

section 1464, subdivision (a)(1),[9] and Government Code section 76000, subdivision (a).[10] The People calculate the sum of these additional penalties as $357.[11] The abstract of judgment must be corrected to reflect these amounts.

The People further contend the trial court erred in failing to assess a state surcharge pursuant to section 1465.7, subdivision (a),[12] and erred in calculating the state court construction penalty pursuant to Government Code section 70372, subdivision (a)(1).[13] Using the base penalty of $210 under section 1464, subdivision (a)(1), the state surcharge under section 1465.7, subdivision (a), is $42. With respect to the state court construction penalty, the trial court wrongly calculated the penalty to be $175,[14] which

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[9] Section 1464, subdivision (a)(1), provides: "Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, and except as otherwise provided in this section, there shall be levied a state penalty in the amount of ten dollars ($10) for every ten dollars ($10), or part of ten dollars ($10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses . . . ."

[10] Government Code section 76000, subdivision (a)(1), provides: "Except as otherwise provided elsewhere in this section, in each county there shall be levied an additional penalty in the amount of seven dollars ($7) for every ten dollars ($10), or part of ten dollars ($10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses . . . ."

[11] The People's calculation includes the sum of $210 pursuant to section 1464, subdivision (a)(1), and the sum of $147 pursuant to Government Code section 76000, subdivision (a)(1).

[12] Section 1465.7, subdivision (a), provides: "A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of section 1464."

[13] Government Code section 70372, subdivision (a), provides: "(1) Except as otherwise provided in subdivision (b) of Section 70375 and in this article, there shall be levied a state court construction penalty, in the amount of five dollars ($5) for every ten dollars ($10), or part of ten dollars ($10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses . . . . This penalty is in addition to any other state or local penalty, including, but not limited to, the penalty provided by Section 1464 of the Penal Code and Section 76000. [¶] (2) The amount of the court construction penalty may be reduced by a county as provided in subdivision (b) of Section 70375."

[14] The court appears to have improperly calculated the penalty as $5 per offense.

was incorrectly recorded in the abstract of judgment as $10. As modified by Government Code section 70375, subdivision (b),[15] the state court construction penalty is $63. Accordingly, the abstract of judgment must be corrected to reflect a state surcharge of $42 and a state court construction fee of $63.

DISPOSITION

Marquez's conviction on count 22 is reversed, and the corresponding sentence of 25 years to life plus sentencing enhancements totaling 20 years is vacated. The judgment is modified to impose additional penalty assessments of $210 pursuant to section 1464, subdivision (a)(1), and $147 pursuant to Government Code section 76000, subdivision (a)(1), a $42 state surcharge pursuant to section 1465.7, subdivision (a), and a state court construction fee of $63 pursuant to Government Code section 70372, subdivision (a). The judgment is affirmed in all other respects.

The abstract of judgment is also ordered corrected as set forth in this opinion. The superior court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

WOODS, J. JACKSON, J.

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[15] Section 70375, subdivision (b), provides: "In each county, the five-dollar ($5) penalty amount authorized by subdivision (a) of Section 70372 shall be reduced by the amount collected for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401 to the extent it is funded by money from the local courthouse construction fund." According to the People, the state court construction fee applicable within the County of Los Angeles is calculated as $3 for each $10 in fines. (See *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1252-1254.)